Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF SBC COMMUNICATIONS INC. IN RESPONSE TO PUBLIC NOTICE OF NOVEMBER 18, 1996

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SUMMARY*

With Section 254 of the Act, Congress has revisited the universal service mandate and articulated specific principles and established new requirements and limitations in pursuing the goal of "just, reasonable, and affordable" universal service. As the Commission considers the Recommended Decision and promulgates rules to ensure the "preservation and advancement of universal service" in a competitive environment, its focus must be upon those principles, requirements, and limitations. Any Commission action resulting from implementation of the Act must be framed within the competitive and deregulatory goals of the Act and ultimately must serve the public interest.

At the same time, the Commission must be careful not to go beyond the language or intent of the Act. Congress did not intend that the revenues of the incumbent LECs be decreased by regulatory fiat, nor was inefficient market entry to be encouraged or underwritten. The Commission should implement only those rules necessary to meet the requirements of the Act, and which allow competitive markets to evolve, with the expected public benefits.

SBC fully supports the adoption of "competitive neutrality" as a universal service principle, but offers clearer definition. SBC also offers a variation of the Joint Board's LifeLine proposal, and seeks a modification of the proposed disconnect rule. As to rural health care, SBC opposes any support for toll-free ISP access, CPE, the elimination of distance-based or other usage-based rates, or network modernization plans.

As the Act envisions, all users of telecommunications services are to share equitably in the

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* The abbreviations used in this Summary are as defined in the main text.

support of universal service. Although the Act explicitly states that all interstate carriers must contribute to the interstate support mechanism, nowhere in the Act did Congress prohibit those carriers from directly passing on the cost of universal service to their customers. To the contrary, Congress mandated that universal service support funding must be explicit; this is achievable only through a mandatory end-user surcharge.

The Joint Board's recommendation to use "gross revenues net of payments to carriers" would discourage deployment of facilities in contravention of one of the principle objectives of the Act, would not be competitively neutral in that facilities-based carriers are discriminated against, and would violate Section 254(d). Other funding bases that would not have those effects are available. The interstate support mechanism should be based solely on interstate retail revenues to honor the continuing interstate/intrastate jurisdictional division.

The Act provides a detailed definition of eligibility for universal service support in Section 214(e). In general, eligible carriers must offer all services defined as comprising "universal service" throughout the service area for which they have been so designated. However, no support should be available for any universal service provided by an eligible carrier that is not "quality" or provided "at just, reasonable, and affordable rates." States should be expressly permitted to adopt standards to meet those primary objectives of Section 254.

Support is required due to the cost of the facilities associated with the provision of universal service in certain areas. In order to achieve competitive neutrality and to ensure that universal support payments flow to support those facilities, the carrier providing the facilities actually used to provision universal service should receive the support.

The Joint Board's endorsement of forward-looking economic costs as the appropriate

measure of costs to be used for determining universal service support requirements fails to satisfy requirements of the Act. To the extent forward-looking costs fall short of actual universal-service costs -- and the size of universal service support is based on forward-looking costs -- LECs may not be able to recover their actual cost of providing universal service, and will not be allowed an opportunity to recoup unrecovered universal service investment. In the recommended cost workshops, the Commission must seek to adopt a cost approach which accommodates recovery of past network investments with efficient operation of a quality telecommunications network in the future. There is also no reasonable basis for disparately treating "rural" carriers and "non-rural" carriers, especially with respect to service provided in rural areas.

Congress has also left to the Joint Board and the Commission the determination of what constitutes "high cost" in terms of universal service. While total support is the difference between the actual costs of, and the actual revenues associated with, the provision of universal service within a specific service area, the support should be jurisdictionalized to determine how much support is provided by the federal universal support mechanism. The interstate funding mechanism must be sufficient to address the existing level of interstate support (both explicit and implicit). To that end, it is also necessary to designate a standardized area over which universal service costs will be determined.

The Joint Board correctly recognized that the CCL charge is an inefficient mechanism for recovering non-traffic sensitive loop costs, but failed to acknowledge that the charge is an implicit universal service support mechanism. The CCL charge recommendations that the Joint Board did make are inappropriate.

As to the services that will be eligible for support, it would be unnecessarily burdensome

and impractical, if not impossible, to designate specific customer locations as worthy of universal service support. A workable means does not exist to implement such a concept, especially in a competitive environment. Moreover, such a limited definition would be a drastic departure from prior practice.

The Commission cannot lawfully implement the Joint Board's recommendations regarding discounts for schools and libraries. Use of an RFP process would discriminate against incumbent LECs. The proposed LCP process is not consistent with the Act, and would intrude upon the jurisdiction of State commissions with respect to intrastate services. Similarly, mandating intrastate discounts would further intrude in an area specifically left to the States. The Joint Board's interpretation of Section 254 to permit funding of Internet access and internal connections, and non-carriers would be contrary to the Act and would clearly make the contributions made by interstate carriers "taxes" in violation of the United States Constitution. The Commission cannot adopt "all telecommunications services" as a definition of universal service for schools and libraries without violating the Act.

Finally, the Commission must remain aware of the impact its decisions in this proceeding will have on the incumbent LECs, especially in light of the Interconnection Order and the anticipated access reform proceeding. Incumbent LECs remain pervasively regulated, and as a result of the Act have even more obligations and duties. As required by Hope and Dusquesne, incumbent LECs remain constitutionally entitled to a reasonable opportunity to recover their prudently incurred expenses and to earn a reasonable return on their prudent investments used in fulfilling their regulatory obligations. Nothing in the Act has affected the Fifth Amendment right or those standards.

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COMMENTS OF SBC COMMUNICATIONS INC.
IN RESPONSE TO PUBLIC NOTICE OF NOVEMBER 18, 1996

SBC Communications Inc. ("SBC"), on behalf of itself and its subsidiaries, files these Comments in response to the Public Notice, DA 96-1891, released November 18, 1996, by the Common Carrier Bureau ("Bureau"). With that Public Notice, the Bureau is seeking comment on five specific topics, in addition to requesting comment in general on the Joint Board's Recommended Decision[1] and the Commission's legal authority to implement such recommendations.

I. OVERVIEW

The Communications Act of 1934 mandates "so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges." 47 U.S.C. 151. In the 62 years that followed, the Commission and the States have effected the goal envisioned by that mandate through the use of an intricate web of explicit and implicit support flows.

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[1] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 96J-3 (November 8, 1996) and Erratum, FCC 96J-3 (November 19, 1996).

By way of the Telecommunications Act of 1996 ("Act"),[2] Congress has revisited the universal service mandate and embodied new requirements in Sections 254, 214(e), and 259. In accordance with the Act, the Commission formed a Federal-State Joint Board to review universal service requirements and to make recommendations. The Commission now seeks comments on those recommendations, as well as on the authority of the Commission to implement them.

As the Commission seeks to promulgate rules to ensure the "preservation and advancement of universal service" (47 U.S.C. 254(b)) in a competitive environment, its focus must be upon those requirements established by Congress. Specifically, the Commission and the States must "ensure that universal service is available at rates that are just, reasonable, and affordable" (47 U.S.C. 254(i)); may add other telecommunications services to the definition for schools, libraries and rural health care providers (47 U.S.C. 254(c)(3)); and must establish a universal service support mechanism which is specific, predictable, and sufficient, to which all interstate carriers contribute and the funds from which are paid to carriers. 47 U.S.C. 254(d); 47 U.S.C. 254(h). Any Commission action resulting from implementation of the Act must be framed within the competitive and deregulatory goals of the Act and ultimately must serve the public interest.

At the same time, the Commission must not go beyond the language or intent of the Act. For example, Congress did not intend that the revenues of the incumbent local exchange carriers ("LECs") be decreased by regulatory fiat. Nor did Congress intend that inefficient market entry

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[2] Pub. L. No. 104-104; 110 State. 56 (1996).

should be encouraged or underwritten by universal service rules. Congress expects that the Commission will implement only those rules necessary to meet the requirements of the Act, and which allow competitive markets to evolve, with the expected public benefits.

Generally, Congress intended for all users of telecommunications services to share equitably in the support of universal service goals. Although the Act explicitly states that all interstate carriers must contribute to the interstate support mechanism, nowhere in the Act did Congress prohibit those carriers from directly passing on the cost of universal service to their customers. As will be demonstrated herein, Congress expected that customers ultimately will be responsible for the costs associated with universal service. Any universal service support funding mechanism must, therefore, be explicit (i.e., through an end-user surcharge applicable to all users of telecommunications services) and mandatory to achieve competitive neutrality. Moreover, the interstate support mechanism should be based solely on interstate retail revenues to honor the continuing interstate/intrastate jurisdictional division.

The Act provides a detailed definition of eligibility for universal service support. See Section 214(e). In general, eligible carriers must offer all services defined as comprising "universal service" throughout the service area for which they have been so designated. The first universal service principle identified by Congress requires "quality services . . . at just, reasonable, and affordable rates." 47 U.S.C. 254(b)(1). Obviously, no support should be available for service provided by any eligible carrier that does not meet these requirements. In addition, in order to achieve the principle of "competitive neutrality," universal service support should flow to the eligible carrier providing the facilities actually used to provision universal service.

The Joint Board's endorsement of forward-looking economic costs as the appropriate costs to be used for determining universal service support requirements fails to satisfy the requirements of the Act. To the extent forward-looking costs fall short of actual universal service costs -- and the size of universal service support is based on forward-looking costs -- LECs will not be allowed an opportunity to fully recover previously incurred investment necessary to provide universal service. The Commission must now, through industry workshops, adopt a cost approach that identifies actual costs and thereby promotes efficient operation of a quality telecommunications network in the future.

Congress has also left to the Joint Board and the Commission the determination of what constitutes "high cost" in terms of universal service, and thus is eligible for support. While total support is the difference between the actual costs of, and the actual revenues associated with, the provision of universal service within a specific area, the support should be jurisdictionalized to determine how much is to be provided by the federal universal service support mechanisms. To that end, it is also necessary to designate a standardized area over which universal service costs will be determined.

The Joint Board correctly recognized that the Carrier Common Line ("CCL") charge is an inefficient mechanism for recovering non-traffic sensitive loop costs, but failed to acknowledge that the charge is an implicit universal service support mechanism. This contrasts sharply with the Commission's stated motive of "the continued assurance of universal service" when the CCL

charge was adopted as an alternative to a higher interstate subscriber line charge ("SLC").[3] The corresponding recommendations the Joint Board makes with respect to common line rate reductions are inappropriate.

As to the services that will be eligible for support, it would be unnecessarily burdensome and impractical, if not impossible, to designate specific consumer locations (e.g., primary residence) as worthy of universal service support. While certain uses of telecommunications services are theoretically more appropriate for consideration as "universal service," a workable means does not exist to implement such a concept, especially in a competitive environment. Moreover, such a narrowing of the concept of universal service would be a drastic departure from previous federal and State policies.

Additionally, for reasons set forth in these Comments, the Commission cannot lawfully implement the Joint Board's recommendations regarding discounts for schools and libraries.

Finally, the Commission must remain aware of the impact its decisions in this proceeding will have on the incumbent LECs, especially in light of the Interconnection Order[4] and anticipated access reform proceeding.

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[3] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, FCC 82-579, 93 F.C.C.2d 241, 278 para. 122 (1983).

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (August 8, 1996) ("Interconnection Order"), appeals pending sub nom. Iowa Utilities Board v. FCC, No. 96-3321, and CompTel v. FCC, No. 96-3608, 8th Circuit.

II. SBC'S RESPONSES TO THE QUESTIONS POSED BY THE COMMISSION

a. Principles

SBC fully supports the Joint Board's recommendation to establish "competitive neutrality" as an additional principle upon which to base policies for the preservation and advancement of universal service, and agrees that the concept is consistent with both the letter and spirit of the Act. The definition of competitive neutrality offered by the Joint Board, however, is circular at best. A clearer definition would be:

> COMPETITIVE NEUTRALITY - Universal service support mechanisms and rules should be applied in a manner which neither advantages nor disadvantages one provider of telecommunications services over another, nor favors or disfavors one technology over another.

Consumers, not competitors, should be the ultimate beneficiaries of a competitive market and each universal service policy or rule must be reviewed to ensure that consumers ultimately benefit, not specific carriers or groups of carriers.

b. Low-Income

With the noted exceptions, SBC supports the Joint Board's recommendation to expand LifeLine assistance and to require all eligible carriers to participate. The Joint Board's targeted response should help increase subscribership among lower income consumers. The Commission is challenged with balancing the desire to increase low-income subscribership with the desire to keep the overall universal service fund size at a manageable level.

The Joint Board specifically sought comment on whether the proposed federal baseline benefit of $5.25 for LifeLine participants is appropriate. Increasing the federal baseline support to

$5.25 would represent a substantial increase to the federal support amount. Using data from the Commission's most recent Monitoring Report in CC Docket No. 87-339,[5] 1995 Federal LifeLine support totals $137 million annually. SBC estimates that expanding the current $3.50 level of Federal support to States not currently participating in the federal LifeLine program would increase that support to approximately $256 million annually. Increasing the baseline support amount to $5.25 would increase the baseline Federal funding requirement to $356 million. Both of these estimates would of course be further increased by Federal matching of State contributions.

Based upon the record in CC Docket No. 95-115,[6] however, it seems more likely that the Joint Board's other proposals will have more of an impact on low-income subscribership than reducing the monthly local service charge through a 50% increase in the federal benefit amount. That record indicates that the level of the recurring monthly local service charge is not the principle impediment to obtaining service, especially when compared to other factors. Accordingly, it is expected that more ground will be gained with proposals to waive deposit requirements when LifeLine qualifying customers voluntarily subscribe to toll restriction or management services, or to offer toll management capabilities at no charge to qualifying customers.

In light of that, the Commission should instead consider leaving the baseline level of

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[5] Monitoring Report, CC Docket Number 87-339, May 1996, Tables 2.3 and 4.19.

[6] *Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, CC Docket No. 95-115.

support at the current $3.50 level and, to incent the States to provide LifeLine support, match dollar-for-dollar the full amount of any State contribution over $3.50 for a total federal benefit not to exceed $7.00. This approach is demonstrated below:

STATE	FEDERAL BASELINE BENEFIT	POTENTIAL STATE BENEFIT	FEDERAL MATCH	TOTAL BENEFIT
A	$3.50	$0.00	$0.00	$3.50
B	$3.50	$3.50	$0.00	$7.00
C	$3.50	$5.00	$1.50	$10.00
D	$3.50	$8.00	$3.50	$15.00

This approach would maintain the benefit for qualifying lower income households in those relatively few States that do not currently offer a certified LifeLine program, as well as provide a greater incentive for States to supplement the federal benefit. SBC believes that this approach would more fully achieve the balance that the Joint Board and the Commission seek.

Finally, in its recommendation to prohibit eligible carriers from disconnecting LifeLine customers for non-payment of toll charges, the Joint Board did not specify whose toll charges (those charged by eligible carriers for services rendered, those billed on behalf of interexchange carriers, or both). SBC opposes any rule that prevents eligible carriers from disconnecting customers for non-payment of any appropriately billed charges. Nevertheless, to the extent a rule is adopted, those eligible carriers must be allowed the flexibility to impose mandatory toll restriction and limitations on any LifeLine customer who has demonstrated a history of unpaid toll charges (whether when re-establishing service or during the course of service). Such flexibility

would at least allow eligible carriers to avoid future uncollectible toll charges associated with its own customers or any carriers' customers with whom the LEC has a billing contract. Otherwise, LifeLine customers have effectively been given free toll at the expense of other customers.

c. Schools/Libraries

The Commission seeks comment on the methods that should be used to identify high-cost areas for the purposes of providing greater discounts to schools and libraries located in high-cost areas. The Joint Board did not make a recommendation, but did suggest that unseparated loop costs of the incumbent LEC should be considered. SBC cannot understand why the Joint Board suggests using actual costs for the determination of high-cost areas for schools and libraries, but not for the general definition of "universal service." There is no rational or lawful basis for distinguishing between the two high-cost determinations. As explained elsewhere, actual cost is the only proper basis on which to determine high-cost areas. In any event, whatever mechanism is used to identify high-cost markets for universal service funding should also be used to determine high-cost schools and libraries. Such an approach will avoid the duplication and administratively burdensome process of implementing and maintaining different mechanisms.

The Commission also seeks comment on the measures of economic advantage that are readily available to identify economically disadvantaged non-public schools and libraries. SBC makes no specific recommendation, but believes that the measures used should reasonably target the intended institutions.

d. Health Care

The Commission seeks comment on the scope of services that should be included in the list of additional services for rural health care providers. The Commission should include with that list commercially available telecommunication transport services with transmission speeds of up to 1.544 Mbps which are required to enhance delivery of patient care and have been subscribed to by a majority of health care providers in urban markets. Since advances in technology have diminished the need for greater speed, SBC cannot recommend expanding the definition beyond transmission speeds of 1.544 Mbps. It is also important that such services be used solely for the delivery of patient care. Only those services that are used for patient diagnostic activities or treatment (not including, for example, bedside phones in hospitals, general administrative lines) should be eligible for additional support under Section 254(h)(1). The Act is clear that only telecommunications services are to be included in the list of additional services; accordingly, the Joint Board's recommendation that non-telecommunications services and products such as Internet access and customer premises equipment ("CPE") are not eligible is correct. Recommended Decision, para. 656.

The Commission also seeks comment on the costs of providing toll-free access to Internet service providers ("ISPs") to rural health care providers, and the costs of eliminating distance-sensitive charges. No support is necessary. ISPs are expanding rapidly and, like the Joint Board,[7] SBC believes the competitive marketplace can and should be relied upon to continue to eliminate

[7] Recommended Decision, para. 69.

this perceived need. Moreover, taking such action may distort ISPs incentives to build-out in rural markets.

The Commission seeks comment on making network modernization part of the rural health care provision. Such action is beyond the scope of authority under the Act. The Act specifies that a list of telecommunications services are to be priced to rural health care providers at rates that are reasonably comparable to rates charged to urban health care providers. There is no provision for funding network upgrades. Such actions would be costly, unmanageable, and unenforceable. The stated goal of the Act is to promote competition. The Commission should let the competitive marketplace determine the pace of network modernization.

e. Administration

Carrier contributions to the interstate universal service support mechanism should be based on interstate retail revenues. Likewise, States should develop a similar contribution mechanism for intrastate universal service support based upon intrastate retail revenues. This matter is further discussed in Section IV.

III. A MANDATORY END-USER SURCHARGE IS A NECESSARY AND LAWFUL MEANS TO ENSURE COMPETITIVELY NEUTRAL FUNDING OF UNIVERSAL SERVICE

At a minimum, competitive neutrality and the need to make universal service funding explicit demand that the Commission mandates that all universal service funding (including support for education, libraries, and health care) be passed-through by all providers to customers in the form of an explicit, mandatory surcharge. Congress contemplated that universal service

support should be explicit. Absent an explicit pass-through, the funding will remain implicitly embedded in the rates paid by customers (whether end-users or carriers), thereby violating Section 254(e). Consistent with the terms of the Act and as at least two of the Joint Board members recognized,[8] the shareholders of carriers are not obligated to fund, and do not fund, universal service; customers ultimately do and they should be made aware of their contributions. The Commission should follow Congress' direction that support be explicit and mandate a surcharge to customers. With an explicit surcharge based on a percentage of the customer's bill for retail interstate services, each customer will understand that part of their bill will expressly fund the national goal of universal service.

The Commission should reject the notion that Section 254(d) is to the contrary. Section 254(d) indicates only that Congress wanted to ensure that all carriers providing interstate telecommunications services should share equitably in the funding of universal service. Neither Section 254(d) nor any other provision of the Act precludes recovery of universal service contributions assessed to carriers from customers through an explicit charge.[9] Rather, Congress clearly rejected implicit funding as a matter of policy. Absent a mandated pass-though, that policy

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[8] See "Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part," p. 14; "Separate Statement of Commissioner Laska Schoenfelder, Dissenting in Part," p. 7.

[9] The objection to a customer pass-though surcharge is rather inexplicable in light of the acknowledgment in paragraph 776 of the Recommended Decision that the suggested flat-rate charge that would replace the CCL charge could be passed on to end-users by the paying interexchange carriers. The Joint Board also acknowledges in paragraph 808 that incumbent LECs are permitted to charge users of unbundled elements an equitable and nondiscriminatory portion of the universal service obligation.

against implicit funding will be directly frustrated.

More critically, continued reliance on implicit funding will continue the inequitable and disproportionate manner in which different classes of customers and geographic regions contribute to universal service support. Urban customers will be pressured to continue to pay more than rural, toll users will pay more than local, and so on. Even those carriers not subject to pricing constraints can also be expected to seek to recover more implicit funding from customers, areas, and services where competition is less intense, while relieving customers, areas, and services subject to greater competition from an equitable and nondiscriminatory share of universal service burdens.

Discrimination will also continue to occur between carriers. Incumbent LECs' prices are controlled by federal and State regulators, while other carriers' prices are not. To the extent the market allows, LEC competitors will be free to adjust their pricing levels to recover their assessed universal service contribution absent a mandatory pass-through; incumbent LECs will not be able to do so. Without express approval to adjust prices to recover these contributions, incumbent LECs will not have a means to recover their contributions, completely ignoring the need to maintain competitive neutrality and likely violating the Fifth Amendment rights of the incumbent LECs.

Only a mandatory end-user surcharge can assure the Commission and Congress that all customers are contributing their fair share and no more, and that carriers are treated in an equitable and competitively neutral manner. This is true no matter the funding base.

A reasonable means of minimizing the magnitude of an end-user universal service

surcharge is to address a significant portion of loop cost recovery through adjustments to the SLC. FCC Commissioner Chong, in her separate statement, astutely observed that "[t]he SLC is a non-traffic sensitive charge that recovers non-traffic sensitive costs in the most economically efficient manner from end users. Any policy that, in essence, shifts or perpetuates the recovery of these costs from interstate providers can, at best, be described as an inefficient 'shell game' on consumers."[10]

The Joint Board gave no economic or policy explanation for dismissing the possibility of a SLC increase on primary residence lines, eliminating a means of following its legislative mandate to make universal support explicit.[11] Most importantly, the combined effect of SLC charges with the Joint Board's recommendations to expand the LifeLine and LinkUp programs would assure protection for lower income end-users.

IV. CARRIER CONTRIBUTIONS TO THE INTERSTATE UNIVERSAL SERVICE FUND SHOULD BE BASED ON INTERSTATE, RETAIL REVENUES

The recommended use of a carrier's gross telecommunications revenues net payments to other carriers as the basis for determining a carrier's funding contributions (Recommended Decision, para. 807) is contrary to the Act's "ultimate goal" of encouraging facilities-based

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[10] "Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part," p. 12 (footnote omitted).

[11] Confining the SLC increase prohibition to primary residence lines leaves the Commission room to pursue a SLC increase for "non-primary" residence and business lines.

providers of telephone exchange and exchange access services,[12] and will effectively discriminate against classes of carriers.

Under the Joint Board's proposal, a carrier that avoids investing in the network infrastructure by reselling the incumbent LEC's services or "rebundling" unbundled network components can not only eliminate any network investment risks, but can also reduce its share of the universal service obligation by netting out its payments to other carriers that actually deploy networks and assume the associated risks. Indeed, the recommended funding base creates a distinct and real disincentive against deploying facilities. If, for example, an interstate carrier substitutes its own facilities for those previously procured from another, such carrier's universal service contributions will increase without any commensurate increase in revenues. In other words, deploying facilities will have become economically and financially less attractive as the sole result of regulatory action. Such a result would be directly contrary to the Commission-recognized goal of the Act to encourage the investment in and the deployment of new networks.[13]

For similar reasons, use of gross telecommunications revenues net of payments to other carriers discriminates against facilities-based carriers. One of the Section 254(b) principles is that

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[12] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket No. 96-149, Notice of Proposed Rulemaking, FCC 96-308, at para. 9 (released July 18, 1996).

[13] *Amendment to the Commission's Rules to Establish Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services*, WT Docket No. 96-162, Notice of Proposed Rulemaking, Order on Remand, and Waiver Order, FCC 96-319, at para. 80 (released August 13, 1996); see also Conference Report at 1 (passage of the Act would "accelerate rapidly private sector deployment of advanced telecommunications and information technologies).

"[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation of and advancement of universal service." Section 254(b)(4). That principle is also embodied in the directive that contributions be equitable and non-discriminatory. Section 254(d). The Joint Board's recommendation nevertheless clearly favors those carriers that rely upon another carrier's network to provide service in that the facilities-based carriers shoulder a greater proportion of universal service funding.

Moreover, it further discriminates in that the facilities-based carriers do not get to deduct the costs of their inputs. The Joint Board's recommendation is based on the concept of assessing the "value-added." While such a taxing approach is typically used when issues involve an entire economy, they are not appropriate in the form of an industry specific value-added tax. By doing so, the Joint Board's proposal ignores the value-added component associated with facilities-based carriers. These carriers invest in network equipment and then "add value" by offering service using those facilities -- for example, when providing service to other carriers. Those facilities-based carriers would nevertheless have their contributions based on gross revenues regardless of those investments and costs, and the "value added." In contrast, non-facilities based carriers are able to deduct the input costs of their services. Section 254 provides no basis for adopting a universal service funding base that results in disparate treatment between carriers based upon their individual input decisions, and effectively gives a carrier preferential treatment if it purchases inputs from another carrier. As such, the adoption of such a funding base would be unreasonable

and otherwise unlawful.[14]

The Joint Board cites elimination of a "double payment" problem as one of its reasons for recommending gross revenues net of payments to other carriers. Recommended Decision, para. 807. To the extent that concern may be seen as valid, there are several contribution mechanisms that would avoid any "double payment" problem, would not discriminate or create disincentives against facilities, and which prove superior to the recommendation in other ways. SBC's recommendation to fund contributions on interstate retail revenues not only avoids double payments, but it also avoids the pitfall of disproportionately increasing LEC contributions relative to interexchange carriers ("IXCs") and to non-facilities based carriers. The Joint Board's mechanism, by disproportionately increasing LEC contributions, could well alter the relative access prices of incumbent LECs versus new entrant LECs. In turn, IXCs' purchasing decisions would be affected by such a change in the relative prices of access. A resulting shift in IXC demand away from incumbent LEC access services and toward new entrant services would be economically inefficient if incumbent LEC costs to provide access are actually lower. Consumers would ultimately pay the price in attendant higher long distance prices. Using interstate retail revenues ensures that all contributors share proportionately in the funding responsibility, reflecting the extent to which each firm offers services to end-user customers. The use of retail interstate revenues as the assessment base would be equitable, non-discriminatory, reasonable, and an

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[14] If the Commission assesses universal service funding based on such a concept, facilities-based carriers must be permitted to deduct the network investment and costs from the revenue base.

administrable approach.

Furthermore, Commissioner McClure correctly observes that using both the interstate and intrastate revenues of interstate carriers creates an inequitable and discriminatory basis for interstate universal service contributions.[15] As Commissioner McClure points out, carriers authorized to provide only intrastate service are not required to make contributions to the federal universal service fund. Assessing federal universal service obligations on a carrier's intrastate revenues because that carrier also provides interstate service clearly discriminates against the carrier providing interstate service.

V. UNIVERSAL SERVICE SUPPORT MUST ONLY BE AVAILABLE WHEN AN ELIGIBLE CARRIER PROVIDES "QUALITY" UNIVERSAL SERVICE AT "JUST REASONABLE, AND AFFORDABLE" RATES

One of the primary goals of this proceeding should be to ensure that universal service funding is paid to those carriers incurring an actual cost recovery shortfall associated with providing "universal service." Consistent with the provisions of Section 254, the Commission should refuse to adopt funding structures that would misdirect funding away from carriers that have the burden of providing quality universal service at "just, reasonable, and affordable" rates, or from supporting the network infrastructure over which universal service is provided. Accordingly, several modifications are necessary to the Recommended Decision to ensure that universal service is preserved and maintained by directing funds to only the appropriate carriers,

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[15] See "Separate Statement of Commissioner Kenneth McClure, Concurring in Part and Dissenting in Part."